

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

REGINALD BYRD,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
LOUIS FOLINO, et al.,	:	
Respondents.	:	NO. 10-1700

ORDER

AND NOW, this 12th day of January 2012, upon careful and independent consideration of the Report and Recommendation of Magistrate Judge Rapoport, the objections thereto, and the submissions of the parties, **it is hereby ORDERED** that:

1. The Objections are **OVERRULED** and the Report and Recommendation is **APPROVED AND ADOPTED**;
2. The Petition for a Writ of *Habeas Corpus* is **DISMISSED WITHOUT PREJUDICE**;
3. Petitioner's "Request for the Court to Accept Evidence" [Doc. No. 33] and "Motion to Strike" [Doc. No. 35] are **DISMISSED AS MOOT**; and
4. There is no basis for the issuance of a certificate of appealability.

It is so **ORDERED**.¹

BY THE COURT:

/s/ **Cynthia M. Rufe**

CYNTHIA M. RUFE, J.

¹ Seeking review of his state-court conviction, Petitioner filed a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The petition was referred to Magistrate Judge Arnold C. Rapoport for a report and recommendation. Magistrate Judge Rapoport recommended that the petition be dismissed without prejudice because Petitioner had not exhausted his remedies through a post-conviction relief petition in the state courts, and the time to file such a petition had not yet run. After the Report and Recommendation was filed, Petitioner did file a state-court petition (a file-stamped copy of which is attached to one of his submissions), although it may not have been timely filed. Nonetheless, because the state-court petition is pending, this petition will be dismissed without prejudice.